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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 22, 1999

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. PUE990619

ROBERT A. WINNEY

d/b/a THE WATERWORKS COMPANY  
OF FRANKLIN COUNTY,  
Defendant

RULE TO SHOW CAUSE

Robert A. Winney, d/b/a The Waterworks Company of Franklin County ("The Waterworks Company" or "Company"), holds a certificate of public convenience and necessity authorizing provision of water service in Franklin County. The Company is subject to the Commission's jurisdiction under the Small Water or Sewer Public Utility Act, §§ 56-265.13:1 through 56-265.13:7, and other provisions of Title 56 of the Code of Virginia.

The Commission's Division of Energy Regulation ("the Division") has advised that, during July, August, and September of 1999, it received a number of complaints from customers of The Waterworks Company. The Division also received correspondence from the Company. As provided by Rules 2:4(h) and 5:4 of the Commission's

Rules of Practice and Procedure, 5 VAC 5-10-80, -240,<sup>1</sup> the Division has reviewed these customer complaints. Based on its investigation, the Division alleges that The Waterworks Company has violated various provisions of the Code of Virginia.

The specific allegations are as follows:

1. The Division alleges that The Waterworks Company has failed to repair leaks in its storage tank and in its distribution lines. It is alleged that a distribution line leak has gone unrepaired for approximately six weeks and that the leakage has caused damage to a customer's property. Additionally, it is alleged that the leaks have resulted in substantial water loss, which has compromised the reliability of the system. As the holder of a certificate of public convenience and necessity issued pursuant to § 56-265.3, the Company is obligated to render adequate service to the public. As provided by § 56-265.13:4, a small water utility must furnish reasonably adequate facilities. The Division alleges The Waterworks Company's facilities are not adequately maintained as required by law.

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<sup>1</sup> A copy of the Commission's Rules of Practice and Procedure may be obtained from the Clerk, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23219-1197. The Rules may be also found on the Commission's Web site at <http://dit1.state.va.us/scc/rules/rulestoc.htm>.

2. The Division alleges that The Waterworks Company's service was interrupted for several hours on the afternoon of September 5, 1999, and on the morning of September 12, 1999. The Division alleges that on September 13, 1999, service to at least one customer was interrupted for several hours. Section 56-265.13:4 requires The Waterworks Company to furnish reasonably adequate service. The obligation is also imposed on the Company by virtue of holding a certificate issued pursuant to § 56-265.3. The Division alleges that service is inadequate.
3. In letters to the Division dated July 21 and July 31, 1999, The Waterworks Company stated that it would not pay its bills for the electricity required to operate its pumps. Disconnection of electricity would interrupt service. On behalf of the Company's customers, the Division has negotiated with the electric utility serving The Waterworks Company to continue service temporarily. Making provision for payment of electric service is necessary to assure adequate service as required by §§ 56-265.3 and 56-265.13:4. The Division alleges that The Waterworks Company has jeopardized service by failing to provide for payment of electric bills.
4. The Division alleges that The Waterworks Company rendered bills for the third quarter of 1999 payable on or before

July 10, 1999, using a rate of \$80.50. In Application of Robert A. Winney d/b/a The Waterworks Company of Franklin County, Case No. PUE980811, Final Order of April 15, 1999 (Document Control No. 990430003),<sup>2</sup> the Commission dismissed an application to increase the quarterly rate from \$67.50 to \$80.50. The Commission also prescribed a rate for the third quarter of 1999 of \$41.50 or \$40.74, depending on the customer's payment history for the first two quarters of 1999. These rates were developed by subtracting a refund amount from \$67.50, the authorized quarterly rate. Billing at a rate in excess of those prescribed for the third quarter would deny the customers the refund directed by the Commission. As provided by § 56-265.13:6, the Commission may fix rates and order refunds. The Division alleges that The Waterworks Company violated this provision of law by charging a higher rate and refusing to make refunds.

5. The Division alleges that, in rendering bills for the third quarter using a rate of \$80.50, The Waterworks Company implemented a change in rates and charges in violation of § 56-265.13:5 and Rules 4 and 5 of the

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<sup>2</sup> An official copy of this Order may be obtained from the Clerk, State Corporation Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. The order may be found on the Commission's website at <http://dit1.state.va.us/scc/orders/e980811.htm>.

Commission's Rules Implementing the Small Water or Sewer Public Utility Act, 20 VAC 5-200-40. In the same Final Order cited in allegation 4 above, the Commission dismissed The Waterworks Company's application to change rates and directed continued application of a rate of \$67.50 per quarter. The statute and the rules required The Waterworks Company to give written notification to the Commission and to customers before again initiating an increase in rates of \$13.00 per quarter. The Division alleges that no notice was given and that the rate increase for the third quarter of 1999 was unlawful.

Upon consideration of these allegations of violations of statute and Commission rules, the Commission finds that a proceeding should be initiated and a hearing held. Accordingly,

IT IS ORDERED THAT:

(1) Pursuant to §§ 56-35, 56-36, 56-234.4, and related provisions of Title 56 of the Code of Virginia, this matter be docketed and be assigned Case No. PUE990619.

(2) Robert A. Winney, d/b/a The Waterworks Company of Franklin County, shall appear before the State Corporation Commission on November 30, 1999, at 2:00 p.m. in the General District Courtroom, Franklin County Courthouse, 275 South Main Street, Rocky Mount, Virginia, and show cause why the Commission should not take any or all of the following actions:

(a) Impose a fine for failing or refusing to obey an order, as provided by § 12.1-33 of the Code of Virginia.

(b) Punish for contempt by fine or by confinement, as provided by § 12.1-34 of the Code of Virginia.

(c) Impose a penalty or suspend or revoke the certificate of public convenience and necessity issued to Robert A. Winney d/b/a The Waterworks Company of Franklin County, as provided by § 56-265.6 of the Code of Virginia.

In the event Robert A. Winney, d/b/a The Waterworks Company of Franklin County, does not appear at the appointed time and place, the Commission may receive evidence, hear argument, and proceed to impose penalty in his absence.

(3) As provided by § 12.1-31 of the Code of Virginia and Rule 7:1 of the Commission's Rules of Practice and Procedure ("The Rules"), 5 VAC 5-10-520, a hearing examiner be assigned to conduct all further proceedings and file a final report to the Commission.

(4) On or before November 12, 1999, The Waterworks Company shall file with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and four (4) copies of an answer to this Rule to Show Cause, as provided by Rule 5:16(c) of the Rules, 5 VAC 5-10-420(c). In this answer, The Waterworks Company shall admit or deny any or all of allegations (1) through (5) identified above and shall state whether it will appear at the hearing. If any allegation is denied, the Company shall state those facts it is prepared to establish at the hearing which refute the allegations.

(5) The Clerk of the Commission shall forthwith mail by certified mail, with return receipt requested, three (3) attested copies of this Rule to Show Cause to the Honorable W. Q. Overton, Sheriff of Franklin County, 70 East Court Street, Rocky Mount, Virginia 24151-1720, and enclose therein an addressed stamped envelope for the Sheriff's return.

(6) As provided by §§ 12.1-29 and 17.1-266 of the Code of Virginia, the Sheriff of Franklin County or his Deputy is requested to serve this Rule to Show Cause on Robert A. Winney, 430 Windtree Drive, Moneta, Virginia 24121-3106, in Franklin County, and to make his return to the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118.

(7) Insofar as practicable, the Office of General Counsel shall mail a copy of this Rule to Show Cause to every customer of The Waterworks Company.